IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8578 OF 2004

M/s.Poonawalla Estates, Stud &
Agricultural Farm .. Petitioner

v/s.

Manju Ajwani & ors. .. Respondents

Mr.P.J.Pardiwala with Mr.A.K.Jasani i/by
Mr.P.Y.Vaidya for petitioner.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 21st October, 2004

P.C.

Heard Mr.P.J.Pardiwala, the learned counsel and perused the order dated 22nd July, 2004, passed by the Commissioner of Income Tax-I, Pune.

2. It is not in dispute that for the assessment year 1994-95, the assessee claimed Rs.8,58,91,487/- as deduction under section 80HHC of the Income Tax Act on an export turnover of Rs.19,95,04,449/-. It is also not in dispute that the assessee did not receive the foreign currency equivalent to Rs.4,51,78,779/-. After adjusting a part of the foreign travelling expenses as direct cost, the Assessing Officer allowed deduction under section 80HHC at Rs.6,62,32,322/- only at an export turnover of Rs.15,43,25,670/-. The income of the assessee was assessed at Rs.2,45,59,110/- and a demand of Rs.173.67 lakhs was raised. The time was allowed by the Commissioner of Income Tax upto 30th

September, 1999 for bringing the convertible foreign exchange in respect of the exports for the reasons stated by the assessee. Within the time allowed by the Commissioner of Income Tax, the assessee could not bring convertible foreign exchange. Thereafter, due to change in law, the Reserve Bank of India extended time and the extended time is now expiring on 30th December, 2004. There does not appear to be any dispute about the demand raised. It also does not seem to be in dispute that the amount under the demand has become payable.

3. The difficulty expressed by the assessee, in our opinion, does not justify the stay of the recovery of the outstanding taxes which is now overdue.

4. For all these reasons, we are satisfied that no case for invocation of extraordinary jurisdiction is made out.

5. Writ petition is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)